

## Coast Guard, DHS

## § 53.9

against a member of the Coast Guard for making or preparing to make a protected communication.

*Secretary.* The Secretary of Homeland Security or his or her delegate.

[56 FR 13405, Apr. 2, 1991, as amended by USCG-2003-14505, 68 FR 9535, Feb. 28, 2003; USCG-2009-0239, 75 FR 79959, Dec. 21, 2010]

### § 53.7 Requirements.

(a) No person within the Department of Homeland Security may restrict a member of the Coast Guard from lawfully communicating with a Member of Congress or an Inspector General.

(b) A member of the Coast Guard shall be free from reprisal for making or preparing to make a protected communication.

(c) Any employee or member of the Coast Guard who has the authority to take, direct others to take, or recommend or approve any personnel action shall not, under such authority, take, withhold, threaten to take, or threaten to withhold a personnel action regarding any member of the Coast Guard in reprisal for making or preparing to make a protected communication.

[56 FR 13405, Apr. 2, 1991, as amended by USCG-2003-14505, 68 FR 9535, Feb. 28, 2003; USCG-2009-0239, 75 FR 79959, Dec. 21, 2010]

### § 53.9 Responsibilities.

(a) The Inspector General, Department of Homeland Security shall:

(1) Expeditiously determine whether there is sufficient evidence to warrant an investigation of an allegation that a personnel action has been taken, withheld, or threatened in reprisal for making or preparing to make a protected communication. No investigation is required when such allegation is submitted more than 60 days after the Coast Guard member became aware of the personnel action that is the subject of the allegation.

(2) If such investigation is warranted, initiate a separate investigation of the information the Coast Guard member reasonably believes evidences wrongdoing if a prior investigation has not already been initiated, or if the prior investigation was biased or inadequate.

(3) Complete the investigation of the allegation of reprisal and issue a report not later than 180 days after receipt of

the allegation, which shall include a thorough review of the facts and circumstances relevant to the allegation, the relevant documents acquired during the investigation, and summaries of interviews conducted. The Inspector General may forward a recommendation as to the disposition of the complaint.

(4) Submit a copy of the investigation report to the Secretary of the Department of Homeland Security and to the Coast Guard member making the allegation not later than 30 days after the completion of the investigation. In the copy of the report transmitted to the member, the Inspector General shall ensure the maximum disclosure of information possible, with the exception of information that is not required to be disclosed under 5 U.S.C. 552. However, the copy transmitted to the member need not contain summaries of interviews conducted, nor any document acquired, during the course of the investigation. Such items shall be transmitted to the member, if the member requests the items, with the copy of the report or after the transmittal to the member of the copy of the report, regardless of whether the request for those items is made before or after the copy of the report is transmitted to the member.

(5) If a determination is made that the report cannot be issued within 180 days of receipt of the allegation, notify the Secretary and the Coast Guard member making the allegation of the reasons why the report will not be submitted within that time, and state when the report will be submitted.

(6) At the request of the Board, submit a copy of the investigative report to the Board.

(b) The Board shall, in accordance with its regulations (33 CFR part 52):

(1) Consider under 10 U.S.C. 1552 and 33 CFR part 52 an application for the correction of records made by a Coast Guard member who has filed a timely complaint with the Inspector General alleging that a personnel action was taken in reprisal for making or preparing to make a protected communication. This may include oral argument, examining and cross-examining

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witnesses, taking depositions, and conducting an evidentiary hearing at the Board's discretion.

(2) Review the report of any investigation by the Inspector General into the Coast Guard member's allegation of reprisal.

(3) As deemed necessary, request the Inspector General to gather further evidence and issue a further report to the Board.

(4) Issue a final decision concerning the application for the correction of military records under this part not later than 180 days after receipt of a complete application.

(c) If the Board elects to hold an administrative hearing, the Coast Guard member may be represented by a Judge Advocate if:

(1) The Inspector General, in the report of the investigation, finds there is probable cause to believe that a personnel action was taken, withheld, or threatened in reprisal for the Coast Guard member making or preparing to make a protected communication;

(2) The Chief Counsel of the Coast Guard (who may also be serving as the Judge Advocate General of the Coast Guard) determines that the case is unusually complex or otherwise requires the assistance of a Judge Advocate to ensure proper presentation of the legal issues in the case; and

(3) The Coast Guard member is not represented by outside counsel chosen by the member.

(d) If the Board elects to hold an administrative hearing, the Board must ensure that the Coast Guard member may examine witnesses through deposition, serve interrogatories, and request the production of evidence, including evidence in the Inspector General investigatory record but not included in the report released to the member.

(e) If the Board determines that a personnel action was taken, withheld, or threatened as a reprisal for a Coast Guard member making or preparing to make a protected communication, the Board may forward its recommendation to the Secretary of the Department of Homeland Security for appropriate administrative or disciplinary action against the individual or individuals found to have taken, withheld, or threatened a personnel action as a

reprisal, and direct any appropriate correction of the member's records.

(f) The Board shall notify the Inspector General of the Board's decision concerning an application for the correction of military records of a Coast Guard member who alleged reprisal for making or preparing to make a protected communication, and of any recommendation to the Secretary of the Department of Homeland Security for appropriate administrative or disciplinary action against the individual or individuals found to have taken, withheld, or threatened a personnel action as a reprisal.

(g) When reprisal is found, the Secretary shall ensure that appropriate corrective action is taken.

[56 FR 13405, Apr. 2, 1991, as amended by USCG-2003-14505, 68 FR 9535, Feb. 28, 2003; USCG-2009-0239, 75 FR 79960, Dec. 21, 2010]

#### § 53.11 Procedures.

(a) Any member of the Coast Guard who reasonably believes a personnel action was taken, withheld, or threatened in reprisal for making or preparing to make a protected communication may file a complaint with the Department of Homeland Security Inspector General Hotline at 1-800-323-8603. Such a complaint may be filed: By letter addressed to the Department of Homeland Security, Office of Inspector General, Hotline, Washington, DC 20528; By faxing the complaint to 202-254-4292; or by e-mailing [DHSOIGHOTLINE@dhs.gov](mailto:DHSOIGHOTLINE@dhs.gov).

(b) The complaint should include the name, address, and telephone number of the complainant; the name and location of the activity where the alleged violation occurred; the personnel action taken, withheld, or threatened that is alleged to be motivated by reprisal; the name(s) of the individual(s) believed to be responsible for the personnel action; the date when the alleged reprisal occurred; and any information that suggests or evidences a connection between the protected communication and reprisal. The complaint should also include a description of the protected communication, including a copy of any written communication and a brief summary of any oral communication showing the date of communication, the subject matter,